

June 4, 2002

Ms. Marlene H. Dortch
Secretary
Office of the Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20054

RE: CS Docket No. 02-52

Dear Ms. Dortch:

I am writing regarding the Federal Communications Commission's (FCC) recent Notice of Proposed Rulemaking (NPRM) in CS Docket No. 02-52, *Appropriate Regulatory Treatment for Broadband Access to the Internet over Cable Facilities*. A number of the communities I represent have contacted my office to express concern with this proceeding.

It is my understanding that on March 15, 2002, the FCC issued a Declaratory Ruling that found cable modem service provided on a cable system should be classified as an "interstate information service." This ruling has broad implications for the ability of local communities to regulate this service. As the former Mayor of Somerville, Massachusetts, one of the first communities in the United States where residents had a true choice between cable television operators, I am acutely aware of the important role local governments play in regulating the cable industry. I have a number of serious concerns with the FCC's ruling and its effect on local authority.

First, the NPRM will drastically impact the ability of local governments to charge franchise fees based on cable modem service revenues. This creates economic hardship for thousands of cities and towns, many already struggling with revenue shortfalls. In addition, it will also deny these communities the opportunity to recoup the expense of providing right-of-way for cable companies.

As more cable providers upgrade their networks to support cable modem, telephone, and additional services by laying additional cable and constructing other facilities, roads and other public infrastructure suffers. Most communities use a portion of the cable franchise fee to offset the increase cost of road maintenance and repair caused by laying cable. For-profit cable companies that use public land should also pay a reasonable fee for its use. Regardless of the FCC classification of these services, the impact on public rights-of-way is the same. If local communities cannot recoup these expenses, they will be forced to subsidize these firms at the expense of providing services to taxpaying residents.

Second, the FCC's potential action will only worsen customer service and widen the digital divide that already exists in many areas. Local governments, through franchise fees and other regulatory powers, are the only entities currently charged with regulating cable services. Local governments have used these powers to encourage cable firms to better serve their residents by providing broadband access to schools, libraries, and government facilities, as well as funding public access channels that serve the local community. In addition, cable-franchising authorities have been effective in pressuring cable companies to address consumer complaints regarding cable modem service. Consumers will have no advocate if the NPRM is adopted.

Cities and towns are also currently able to exert pressure on cable companies to provide broadband service to all of their residents. In many urban areas, including my Congressional District, some companies have not upgraded their networks or offered new products in lower-income neighborhoods. Access to the Internet is vitally important to all Americans. If the NPRM is adopted, cable companies will be allowed to continue this economic redlining of low-income and minority neighborhoods in favor of increasing service to high-income and suburban customers. Local governments have been leaders in forcing cable firms to provide these new services to every household. Removing this regulatory power will only exacerbate the division between rich and poor in thousands of communities throughout the nation.

Finally, the NPRM raises significant Constitutional issues that I do not believe the FCC has adequately addressed. The proposed rule would essentially allow the federal government to require local jurisdictions to give up their right-of-way without compensation, while preempting local laws regarding the use of this property. This greatly expands federal authority over local governments with little public benefit.

I strongly urge the FCC to address these serious issues before moving forward with this proceeding. Local franchising authority has worked extremely well, and there is no evidence that it impedes the roll out of broadband services. The FCC should work with cities and towns to provide high-speed Internet access for all Americans. Thank you for the opportunity to comment on this proceeding.

Sincerely,

Michael E. Capuano
Member of Congress